



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 29, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0035

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 1	5.001 – Standards and Duties 10. Employees Shall Strive to Be Professional	Not Sustained (Unfounded)

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee violated the law and engaged in unprofessional behavior when he sexually assaulted her.

SUMMARY OF INVESTIGATION:

On January 6, 2020, officers from the Renton Police Department (RPD) responded to a report of a rape by the Complainant. The Complainant told the RPD officers that, in the three days prior, she had been texting with a man who she had met on a dating website – Named Employee #1 (NE#1). The Complainant described the texts as flirtatious. That day, she texted NE#1 and invited him to her home for coffee/tea. When he arrived he began kissing her. She led him into the house. She said that he continued kissing her and placed his hand on her legs. He also placed her hand on his penis. She did not say no at that point. The Complainant asserted that, thereafter, they removed their clothing and began having sex. She described that, after penetration, she told NE#1 that she did not want to have sex. The Complainant told the RPD officers that she did not affirmatively provide consent at any point. The Complainant provided text messages between her and NE#1, including one in which she accused him of raping her. In that text exchange, NE#1 told the Complainant that she provided the condom that was used.

On January 15, 2020, an RPD Sergeant spoke with NE#1. He confirmed that he met the Complainant on a dating website. He said that she sent him flirtatious texts but was more sexually suggestive during their telephone conversations. NE#1 stated that he explicitly told the Complainant that he was not interested in a relationship. NE#1 recalled that they became Facebook friends in order for the Complainant to watch him masturbate during video chats. He said that she invited him to her home and, when he arrived, they began kissing on the couch and she performed oral sex on him. He told the RPD Sergeant that they then went upstairs and they began to have sex. He said that, after they had sex, they went downstairs and talked. NE#1 then left. He said that he subsequently blocked the Complainant's from his phone and social media. NE#1 stated that several days later he received a text from a number he did not know that said: "Did you really rape her?" NE#1 called the number, which belonged to a friend of the Complainant. The friend told NE#1 that the Complainant posted on Facebook that NE#1 raped her. NE#1 denied doing so. The RPD Sergeant tried to call both the Complainant and the friend but neither replied to him.



RPD continued its investigation of this matter, including reassigning it to another detective. Ultimately, the case was closed by RPD and they indicated that this decision was made because of the Complainant's lack of cooperation with the investigation.

Given NE#1's employment with SPD, this matter was referred to OPA and this investigation ensued.

OPA contacted the Complainant and the friend. The Complainant texted the OPA investigator indicating that she did not want to participate in the investigation. She later provided text messages between herself and NE#1. OPA had one brief conversation with the Complainant in which she described NE#1 as a bad person who she had trusted because he was a cop. She said that she was going through a difficult divorce and did not have time to take part in this investigation. The friend did not respond to OPA.

OPA obtained relevant records from RPD. This included a 911 call in which the Complainant told the operator that she had a "weird" date with an SPD officer. She stated to the operator that the officer sent her inappropriate pictures and she invited him to her house for coffee. She said that, once there, the officer began to kiss her and that he remained in her home for around 20 minutes. When discussing what occurred, she noted: "I wouldn't say that the word rape is the word but..." She was asked if she wanted an officer to respond to the scene and she responded that she wanted a call first. Shortly thereafter, the Complainant's ex-husband called 911 and requested a welfare check on the Complainant. He told 911 that she sent him an email alleging that she had been raped.

OPA interviewed the ex-husband. He confirmed that the Complainant emailed him and that he called 911. He said that their marriage was ending and that he did not want to be involved with the Complainant. He had no personal information concerning the alleged rape.

OPA reviewed the texts between NE#1 and the Complainant. The text chain included the discussion of their meeting. NE#1 sent the Complainant a picture of his penis. In a response, she stated: "Morning...You can't send me anymore bathroom pics...lol. We better be meeting tomorrow. I'd love a kiss from you..." However, in a text later that afternoon, the Complainant wrote that she had "contacted the authorities" about their interaction, which she described as "not ok." She wrote: "If you'd like to settle this out of court, let me know...otherwise you'll be contacted by Renton police soon." Several minutes later she stated that she had reported the incident to RPD. She texted that she felt "used" and "mistreated." She stated that he "abused" her on her couch and left a condom on the rug in her family room. Their next text was on January 8 when NE#1 wrote the Complainant and said: "Please stop saying untrue things about me on Facebook." When asked, NE#1 did not tell the Complainant who provided the posting. He told the Complainant that it was damaging to make a false allegation. NE#1 denied sexually assaulting the Complainant and said that she invited him upstairs and gave him a condom. She, in turn, denied that. The Complainant accused NE#1 of illegally accessing her Facebook and he said that he did not do so. Ultimately, they ceased communication.

Lastly, OPA interviewed NE#1. He said that he and the Complainant arranged for him to come to her home. He indicated his belief that the encounter was purposed to be sexual. He based this on communications they had prior to the meeting. He stated that, when he arrived, they began kissing. She asked him to come upstairs and he did. She provided him with a condom. He said that he was not completely sure that they had intercourse but, regardless, he decided at some point that he no longer wanted to continue being intimate with her. They went downstairs and talked on the couch. He said that he informed her that he was not interested in a relationship. He believed that this



made her upset because she became quiet and did not walk him to the door. He then left. He later blocked her phone number and social media accounts.

He subsequently received a text from her friend. He said that he spoke to the friend who told him about the rape allegation made by the Complainant. The friend told NE#1 that the Complainant may suffer from mental illness and was not always completely honest with what she told the police. He said that he contacted the Complainant and told her to stop posting untrue information about him. The Complainant was upset by this and because her friend had spoken with NE#1. NE#1 did not have any further contact with the Complainant.

He said that he searched City of Renton records to see if a criminal complaint had been filed against him. He also called RPD. He did not conclusively determine this until he was contacted by the RPD Sergeant. At that point, he contacted his supervisor at SPD and informed her of the allegation.

NE#1 denied raping the Complainant. He said that their sexual activity was consensual. He acknowledged sending a nude picture to the Complainant but denied that this was improper. He said that he did this in his personal capacity and that the Complainant did not indicate that she was upset by this or that she felt that the sending of the picture was improper. Moreover, he stated that she expressed interest in receiving such a picture. Lastly, NE#1 said that he cooperated fully with RPD's criminal investigation.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-10.) The policy states that: "Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*) The policy lastly prohibits officers from using "profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*)

Based on OPA's review of the totality of the record, there is insufficient evidentiary support for the conclusion that NE#1 violated the law. First, while not dispositive, OPA finds it significant that RPD did not establish probable cause to believe that NE#1 committed a crime and that he was not criminally charged. Second, the totality of the evidence and the testimony provided by NE#1 raised questions concerning the Complainant's account of this incident and the Complainant declined to participate in this investigation. Examples of this include but are not limited to: NE#1's denial that he sexually assaulted the Complainant and his contention that the encounter was consensual; NE#1's explanation in both contemporaneous texts and during his interviews that the Complainant provided a condom; NE#1's recounting that the Complainant's friend conveyed that she had previously made inaccurate reports to law enforcement; and the Complainant's first text to NE#1 asking him whether he wanted to reach an out of court settlement to avoid her making a criminal complaint. Ultimately, the lack of an interview from the Complainant prevents OPA from reaching an alternative conclusion on the applicable evidence and from impeaching NE#1's interview responses. Third, given this and when applying the requisite burden of proof, the evidence simply does not rise to the level of establishing criminal behavior on NE#1's part.



For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #2

5.001 – Standards and Duties 10. Employees Shall Strive to Be Professional

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**